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October 26, 2009

Dr. Jane Lubchenco, Undersecretary for Oceans and Atmosphere
and NOAA Administrator
U.S. Department of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Dr. Lubchenco:

I would like to convey my appreciation to you for participating in the meeting earlier this month with me and my staff as well as Congressman Tierney's staff and several participants from the New England Commercial Fishing Industry. This group is intimately familiar with the many difficult issues facing our fishermen as the government looks to balance fishing opportunities with the conservation of fish stocks.

As you are aware, there are many difficult challenges facing commercial fishermen in the northeast as they try to fish sustainably under strict guidelines to eliminate overfishing and rebuild to strict targets over a 10-year period.

This task is particularly important as we work to maintain conservation and the economic and social health of the fishing industry. I know that you are aware that these mandates relate both to the MSA and to national policy because of our general concern for jobs, the economy, and the environment in these troubled economic times. Despite the importance of NOAA's fishery mission, it seems fraught with a lack of responsiveness and a management process that is notoriously slow to react.

In situations where it is clear that more fishing opportunities are warranted, either through updated stock assessment data, or mistakes in the scientific assessment or review process, the Agency must be willing to act on its own to ensure decisive and immediate action to implement revised regulations necessary to protect fishermen and fishing communities from unnecessary and often devastating financial hardship.

Therefore, I ask you and your staff to thoroughly review the following issues that were discussed during this meeting so that substantive action can mitigate some of the economic stress this industry is currently experiencing.

Northeast Skate Complex Amendment 3. We have two main points relative to this issue. First, while we are concerned that mistakes are made, we are more concerned that the mistake (causing the daily catch of skates to be reduced from 20,000 pounds to 2,000 pounds) was not communicated to the New Bedford industry for several weeks after the mistake was discovered. I am not sure at this point that the remedy has been specified. This unnecessary reduction amounts to a loss of 300-500 jobs in New Bedford. Second, it appears to us from the SMAST work that the impact of any modification of skate quotas could be ameliorated by a change in fishing strategy. Given our economic climate, a NOAA strategy to protect troubled fish stocks of skates while maintaining a normal harvest of less intensively fished skates would be appropriate. A targeted approach could avoid populated areas and depths clearly marked in the presentation and provide the fishing opportunities necessary to save hundreds of jobs in the skate processing industry.

Scallop Observer Program. Back in June, both Congressman Jones and I wrote to you regarding the failure of the National Marine Fisheries Service to manage the scallop set-aside that compensated vessel owners and crew for the expense of carrying a mandated observer in the Elephant Trunk Access Area. A subsequent failure of the resource set-aside program for open area observer coverage in early September has resulted in vessel owners and crew paying for this cost out of pocket until the end of the scallop fishing year. I am of the opinion that the government should be paying for this cost. The observer program is a requirement of the federal government and the costs should not be borne by fishermen and their families, particularly in times of economic hardship. This is an issue I intend to address in the near future. However, in the meantime, I urge the Agency to take the action necessary to pay for the cost of this program through the end of the fishing year.

Our main point here is not only do we think the government should pay the cost of the program; we also think the Agency should be accountable when it makes administrative mistakes such as a lapse in administering observer fees. Do you think NOAA could develop accountability measures to compensate those who are affected by administrative mistakes? Also, as with the skate issue, there has been no feedback to the industry regarding how NOAA intends to remedy this situation.

Closed Area Analysis. I remain deeply troubled by the fact that thirty percent of Georges Bank has been closed to fishing since 1996 with no recent discernible analysis having taken place since that time to appropriately determine whether or not there has been any benefit to this action.

Most damaging to our local, regional and national economy, as well as fishing communities, is the fact that an abundant scallop resource has been allowed to go unharvested resulting in the loss of tens of millions of dollars due to natural mortality. In fact, failure to harvest these scallops has resulted in increased trawling in open areas.

I am sure you recognize the need to properly analyze the effectiveness of this massive closure in order to determine whether this area should be reopened to fishing or whether

there is some alternative configuration of the closures that can result in a more efficient use of fish stocks and a protection of the environment.

It was suggested at this meeting that the Agency create a White Paper that would outline a proposal to analyze all closed areas, their effectiveness, and economic impact and I urge the Agency to take this action immediately.

Sectors. The proposed rule for Amendment 16 to the northeast multi-species fishery calls for management under the controversial sector program. The biggest fear I have under this proposal is the real threat of significant consolidation. Fishermen need to have access to fish in order to sustain their businesses and care for their families.

Recommendations for severe reductions in catch to groundfish species such as pollock as well as the restrictive allowable catch of cod and yellowtail would all but ensure that many who rely on this commercial fishery will be forced out unless the Agency takes a lead role in increasing fishing opportunities through available strategies.

Therefore, it is crucial that the Agency do everything within its power to provide increased access to fish stocks that have gone underutilized. As you are aware, many fish within the multispecies complex are harvested at levels far below their total allowable catch. Maximizing yield in fisheries that have gone underutilized must be a top priority for fishery managers.

Also, the Agency cannot rely on the sector program to eliminate bycatch or wasteful discards of stocks. The needless waste of fish that are simply thrown overboard, with most dying or already dead, has resulted in the loss of millions of dollars that could otherwise benefit fishermen who simply need more fishing opportunities in order to survive. It is important that the Agency develop a strategy of retention to the fullest extent possible, with proper monitoring and accountability, which would avoid the disposal of bycatch as waste and provide a shared benefit among fishermen and fishery managers.

I have to state that while I am generally opposed to sectors as an abstract concept, I am troubled by the lack of specificity in sector planning. Are all the planned sectors economically viable? If not, then who will bail them out?

Pollock. It is my understanding that Magnuson requires that fishing mortality be limited to the overfishing limit (OFL). This level of fishing is sometimes sufficient to rebuild a stock within the rebuilding time period. However, many times it is not either because the fishing stock is not growing fast enough to keep up with earlier projections of rebuilding, or fishing mortality targets have been exceeded which slows rebuilding. There are also times when the biomass targets are set higher than is biologically attainable.

Pollock was only recently declared overfished and the rebuilding plan will be implemented in Amendment 16 starting in May 2010. It has been conveyed to me that there is disagreement about the scientific efficiency of the pollock assessment. In fact, the stock could be very abundant and was simply caught at a fast rate inadvertently

resulting in the total allowable catch (TAC) being set too quickly. This is no small matter as this species could trigger the shut down of the entire multispecies fishery. This could be mitigated by setting the 2010 TAC at the full OFL level as fishery managers wait for the results of the June 2010 stock assessment.

As you know, these issues are highly technical and we raise it as an important example that is of current concern. However, as the pollock problem diminishes, there will be another major crisis to take its place with another species (e.g., southern New England winter flounder). We need to develop a series of workshops where the industry can interact with NOAA scientists to develop a more informed set of stock assessments. The pollock problem is particularly important right now and we should develop a workshop that focuses on the issue.

U.S. - Canada Tran boundary Management Agreement. As you know, Congressional and industry representatives have been negotiating legislative language with NOAA staff in order to clarify that this Agreement shall be considered an "international agreement" under the Magnuson Act's exceptions to the standard 10-year rebuilding period. I understand your caution in this matter. However, as this is a very difficult issue, with a legislative fix allowing a higher share of cod and yellowtail for fishermen in both the groundfish and scallop industries, I ask that you directly involve yourself in these discussions.

Our main point here is that we believe the agreement is disadvantaging US fishermen. The organic relationship under the agreement does not parallel other international arrangements such as those on the west coast. We think that the many issues and complications attendant to our east coast fishery relationship with Canada should not be addressed piecemeal, but rather in comprehensive and strategic fashion. I suggest you form a NOAA task force involving your staff and members of the industry to develop a comprehensive plan for fisheries interactions with Canada.

Economic Analysis of proposed fishery regulations – We discussed, at length, the need to provide readily available and substantive economic analysis for all proposed fishery regulations. Specifically, the analysis of the economic impact of sector management on the northeast multi-species industry. This information must be provided in a manner that is both accessible and easily understood by those who are most affected: Fishermen, shoreside businesses, coastal communities, etc.

My main concern here is that based on the documents that come across my desk, the economic impacts of many regulations and actions are unclear despite the mandate of National Standard 8. I would like to feel comfortable that NOAA is taking a new direction in providing the economic impacts of its actions. In particular, as of this moment, I am concerned that the catch share concept may not be viable for some sector groups.

Again, thank you for participating in this meeting and I strongly urge your Agency to take the necessary action to address these important issues as soon as possible and I look forward to continuing our dialogue in these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Barney Frank", with a stylized, cursive script.

BARNEY FRANK